

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

MARK G. SAMS,

Petitioner,

Civil No. 11-3111-CL

v.

REPORT AND
RECOMMENDATION

J.E. THOMAS,

Respondent.

CLARKE, Magistrate Judge.

By Order (#4) entered September 21, 2011, petitioner was allowed until October 21, 2011, to either pay the filing fee or to file an application to proceed in forma pauperis. Petitioner was advised that failure to do one or the other, would result in the dismissal of this proceeding for failure to prosecute.

Petitioner has not paid the fee, filed an application to proceed in forma pauperis, or requested an extension of time in which to do so. Accordingly, petitioner's Petition (#1)

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should be denied without prejudice. This proceeding should be dismissed.¹

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

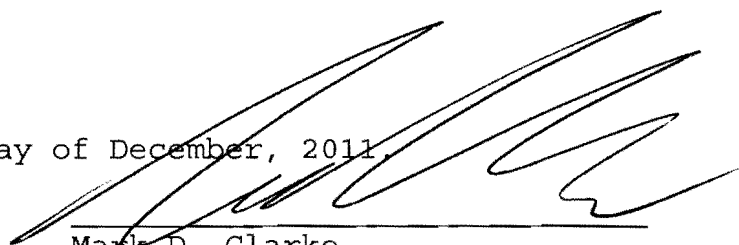
Certificate of Appealability

Should petitioner appeal, a certificate of appealability should be denied as petitioner has not made a substantial showing of the denial of a constitutional right. See, 28

¹The petition in this case is identical to the petition in Civ. No. 11-112-CL, which challenges the allegedly over-crowded conditions at FCC Sheridan. Counsel has been appointed to represent the petitioner in that case.

U.S.C. § 2253(c)(2).

DATED this 14 day of December, 2011.

A handwritten signature in black ink, appearing to read 'Mark D. Clarke', is written over a horizontal line.

Mark D. Clarke
United States Magistrate Judge

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